

## Story, Karen

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**From:** Kluesner, Dave  
**Sent:** Tuesday, April 17, 2018 9:29 AM  
**To:** Lopez, Peter  
**Cc:** Mears, Mary; Lyon, Christopher  
**Subject:** FOR REVIEW: Media inquiry on AES Guayama; PBS NewsHour  
**Attachments:** Johnson to AES 23 December 2016.pdf; Enck to PREPA and EQB 14 August 2014.pdf

**Importance:** High

Good morning Pete. Hope all is well in Chi town. The reporter with PBS inquired yesterday about the status of responses to questions and was hoping to get them today for inclusion in their broadcast, which is scheduled to air later this week. If it helps, we could separate out the reporter's first question from April 11 on compliance, as the answers are pretty straight forward. Then, perhaps you, Mary and I could discuss the reporter's second set of questions from April 13 regarding coal ash regs / Agremax, as the answers are more legal / technical and will require some vetting in OLEM and OPA.

Please advise. Thank you.

Copied below are the first set of questions on compliance:

**Question:** I wanted to double-check with the EPA to see if AES has always been in compliance with their regulations as well. Is there anyone in Puerto Rico's EPA office who can tell me if AES has, on the whole, complied with EPA standards in Puerto Rico?

**Proposed Response:**

EPA issued two compliance orders (2011, 2015) and one penalty action (2012) against AES Guayama related to storm water runoff from the facility.

In July 2011, EPA conducted an inspection under the Clean Water Act that concluded that AES Guayama was discharging storm water runoff to a mangrove forest south of the power plant without the required National Pollutant Discharge Elimination System (NPDES) permit. EPA also concluded that the wetlands south of the power plant were not impacted by the discharges of storm water runoff at the time of the inspection. In March 2012, AES Guayama paid a fine of \$170,000 for failing to file the storm water runoff discharge permit application for the NPDES permit. Subsequently, AES applied for a NPDES permit and obtained permit coverage in September 2013 (under the "2008 multi-sector general permit" previously issued under the NPDES permitting program). Under the 2008 permit, AES was obliged to implement best management practices to control storm water runoff and to sample storm water runoff discharges prior to reaching surface waters such as the neighboring wetlands.

In July 2017, EPA conducted a site visit at AES Guayama to determine whether the facility was in compliance with its NPDES permit. In August 2017, EPA sent a Notice of Violation to AES Guayama concerning findings of non-compliance with storm water runoff requirements under their 2015 permit (a re-issue of the "2008 multi-sector general permit"). The 2015 permit requirements are very similar to the 2008 permit requirements. AES responded. EPA found that 8 of the 10 findings of non-compliance with the NPDES permit were addressed. The two remaining actions involve inadequate dust control practices at the Agremax storage pile and lack of storm water runoff controls associated with a storm water runoff discharge point into wetlands. In October 2018, EPA performed a reconnaissance assessment of the AES Guayama Power Plant to collect information about potential damages to the power plant caused by Hurricane Maria. EPA did not observe any impacts at the two storm water discharge locations near the wetlands. EPA is currently assessing actions taken by AES Guayama to address storm water runoff and the Agremax storage pile dust control following Hurricane Maria, and is working with AES Guayama to complete our assessment.

David W. Kluesner



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**From:** Kluesner, Dave

**Sent:** Monday, April 16, 2018 2:15 PM

**To:** Lopez, Peter

**Cc:** Mears, Mary

**Subject:** FOR REVIEW: Media inquiry on AES Guayama; PBS NewsHour

**Importance:** High

[PETE: FOR REVIEW AND APPROVAL. Below responses have been reviewed / concurred on by DECA, CEPD, ORC and CASD + Mary. Please let me know if you have questions.]

**STATUS:** OPEN

**DEADLINE:** Tuesday, April 17

**REPORTER:** PBS NewsHour; Zachary Green, Segment Producer, [PBS NewsHour Weekend](#), O: 212-560-2850, M: 413-329-8484, [greenz@wnetnews.org](mailto:greenz@wnetnews.org)

**April 11 Question from Zachary Green on AES Guayama**

My name is Zachary Green and I'm a producer with PBS NewsHour Weekend. Bruni Torres from AES Puerto Rico recommended that I reach out to you. We're doing a story on the AES coal plant in Guayama and the debate over whether or not coal ash produced by the plant is affecting the health of people in the area.

One of the people we spoke with for the piece was the head of Puerto Rico's Environmental Quality Board, Tania Vazquez. During our interview with her, she affirmed that, during her tenure—other than not covering their Agremax pile prior to Hurricane Maria—AES Puerto Rico has always complied with EQB regulations.

**Question:** I wanted to double-check with the EPA to see if AES has always been in compliance with their regulations as well. Is there anyone in Puerto Rico's EPA office who can tell me if AES has, on the whole, complied with EPA standards in Puerto Rico?

**Proposed Response:**

EPA issued two compliance orders (2011, 2015) and one penalty action (2012) against AES Guayama related to storm water runoff from the facility.

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#### **April 13 Questions from Zachary Green on AES Guayama**

1. Did the EPA ever fine or warn AES about its use of Agremax after Ms. Enck’s memo and/or after it finalized its CCR disposal rule in 2015?

#### **Proposed Response:**

In a December 2016 letter to AES (attached), EPA’s Office of Land and Emergency Management (OLEM) confirmed that Agremax is a solid waste and the Agremax (a hydrated and cured mixture of coal bottom and fly ash) pile at the AES Guayama power plant is a CCR pile and an existing landfill subject to all applicable requirements of the CCR Rule, including closure. The installation of the planned liner would not change this requirement. AES met a November 2016 regulatory deadline by posting closure plans and other documents on its website, and thus appears to be in compliance with the CCR Rule. Also, AES met an October 2017 CCR rule deadline for the establishment of a groundwater monitoring system.

In an August 2014 letter (attached) to EQB and the Puerto Rico Electric Power Authority regarding the amendment of its 1994 Power Purchase and Operating Agreement with AES, the EPA recommended that until the Coal Combustion Residuals (CCR, *i.e.*, coal ash) Final Rule was finalized, the prohibition in the Agreement on disposal of CCRs was not necessary. EPA stated that the disposal of AES’s CCRs in Puerto Rico should be in a composite lined, permitted landfill that complies with the regulations. The Power Purchase and Operating Agreement was subsequently amended as recommended by EPA, and in September 2014 EQB issued a resolution designating the AES power plant as a solid waste facility subject to EQB permitting authority, and establishing requirements for future beneficial reuse proposals and the disposal of Agremax only in lined landfill cells.

2. Did the EPA ever pursue an investigation of the potential health hazards from the placement of Agremax? If so, what did it find?

#### **Proposed Response:**

The EPA has not done any studies on the health effects of Agremax. In 2012, EPA Region 2 asked the EPA Office of Research and Development to analyze samples of Agremax using a couple of leaching tests under the umbrella of the Leaching Evaluation Assessment Framework (LEAF). LEAF is meant to help measure at what concentrations contaminants could potentially leach from a material. The analysis had a narrow purpose. It did not assess health effects of Agremax. EPA’s Agremax LEAF sampling analysis was only meant to determine leaching behavior. In it, concentrations of various contaminants that leached out of the material using various conditions – with different pH and wetness levels produced in the lab – were compared to two sets of conservative benchmarks.

3. To your knowledge, did Puerto Rico’s Environmental Quality Board change its regulatory policies on Agremax?

#### **Proposed Response:**

Subsequent to the September 2014 EQB Resolution discussed above, Puerto Rico Law 40 was signed into law in July 4, 2017, prohibiting the deposit and disposal of coal ash, fly ash or coal combustion residuals on all roads, lands, including landfills, and water bodies within Puerto Rico. Law 40 defines coal ash or coal combustion residuals as “the materials resulting from coal combustion in power generating plants, including fly ash, bottom ash, boiler slag, and flue gas desulfurization gypsum.” Further, the law prohibits the storage of coal ash or coal combustion residuals within Puerto Rico for a period greater than 180 days from the date of its generation. The storage prohibition and period does not apply to: (1) the controlled storage of coal ash or coal combustion residuals in tanks and silos for the manufacture of cement and concrete, and (2) any other beneficial commercial reuse as established by the relevant state and federal regulatory agencies. In such cases, the storage period shall not exceed one year. Law 40 required EQB to issue regulations to implement such law within ninety days from the date of issuance of such -- approximately by October 4, 2017. EQB has not issued such regulation yet.

On July 13, 2017, a citizens group (Comité Pro Salud, Desarrollo y Ambiente de Tallaboa, Inc.) filed a civil action (Civil No. J PE2017-0289) in the P.R. First Instance Court, Ponce Region, seeking an injunction against PREQB, Peñuelas Valley Landfill, LLC, E.C. Waste LLC and AES Waste to compel the cessation of the depositing of coal ash and its aggregates in the Peñuelas landfill arguing, among others, that Law 40 did not allow the use of Agremax. On August 4, 2017, the Ponce court dismissed the civil action and ruled that Law 40 does not prohibit the deposit and disposal of rock ash or manufactured product Agremax at Peñuelas Valley Landfill and El Coquí Landfill. This decision was appealed by Comité Pro Salud on September 11, 2017. On January 12, 2018, the P.R. Court of Appeals confirmed the lower court’s decision, reasoning that the legislative history of Law 40 and subsequent actions by the P.R. Legislature (by rejecting a proposed amendment to Law 40 in order to broaden the definition of “coal ash or coal combustion residual” to include Agremax) shows the legislators’ intention of allowing the deposit and disposal of Agremax, and considered the solidification of liquid non-hazardous solid waste as a beneficial commercial use permitted by the statute. Comité Pro Salud appealed to the P.R. Supreme Court on February 15, 2018 (Case No. CC-2018-0163) and its petition was denied.

*David W. Kluesner*



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